

REMARKS

Claims 11, 13-15 and 30 are currently pending. In the Final Office Action mailed February 18, 2005, the Examiner has raised the following issues, which are set forth below by number in the order they are addressed herein:

- 1) Information Disclosure Statement references are not found in the scanned application;
- 2) Declaration lists United States permanent residency as the citizenship of Inventor Ebrahim Zandi; and
- 3) Claims 11 and 13-15 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Applicants hereby amend Claims 11 and 13, and added new Claims 31-34 in order to further the prosecution of the present application and Applicants' business interests, yet without acquiescing to the Examiner's arguments. Applicants reserve the right to prosecute the original, similar, or broader claims in one or more future application(s). These amendments do not introduce new matter and are not intended to narrow the scope of any of the claims within the meaning of *Festo*.¹

1) Information Disclosure Statement References Are Provided

The Examiner states that the Information Disclosure Statement references supplied to the Office first on November 22, 1999, and then again on January 9, 2002, are not found in the scanned application. As suggested by the Examiner, Applicants are again providing a copy of FORM PTO-1449, as well as the references cited therein for consideration.

2) Substitute Declaration Is Proper

The Examiner has indicated that the Declaration is defective, for allegedly failing to identify the citizenship of Inventor Ebrahim Zandi. For this reason, Applicants have included herein a Substitute Declaration (attached at Tab 1) from Inventor Ebrahim Zandi. The Substitute

¹ *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 122 S.Ct. 1831, 1838, 62 USPQ2d 1705, 1710 (2002).

Declaration lists Inventor Zandi's current citizenship as United States of America, and provides a current mailing address.

3) The Claims Meet The Written Description Requirement

The Examiner has rejected Claims 11 and 13-15 under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement because they allegedly contain subject matter which was not described in the Specification in a way as to convey that the inventors has possession of the claimed invention. In particular, the Examiner states:

Claim 11 has been amended to recite that the claimed IKK- γ nucleic acid encodes a polypeptide "having at least 87% amino acid identity" with SEQ ID NO: 2. Claims 13-15 depend from this claim and include this limitation... No specific contemplation of sequence having at least 87% amino acid identity to SEQ ID NO: 2 could be found in the specification (Final Office Action, pages 3 and 4).

In addition, the Examiner states:

[n]ucleic acids that encode peptides having at least 87% amino acid identity to SEQ ID NO: 2 constitute a large genus of compounds... The polypeptide resulting from this situation would have amino acid sequences quite different from that of SEQ ID NO: 2 with no guarantee of similar function to that of SEQ ID NO: 2 (Final Office Action, pages 4 and 5).

Applicants respectfully disagree that the claims fail to meet the written description requirement. Nonetheless, Applicants have amended Claims 11 and 13, and added new Claims 31-34, in order to further the prosecution of the present application and Applicants' business interests, yet without acquiescing to the Examiner's arguments, and while reserving the right to prosecute the original, similar, or broader claims in one or more future application(s). Specifically, Applicants have amended Claim 13 as an independent claim, and have amended Claim 11 to recite "an isolated human IKK- γ nucleic acid molecule encoding a polypeptide having at least 90% amino acid identity with SEQ ID NO:2, wherein said polypeptide has one or more biological activities of a full-length IKK- γ polypeptide." In addition, Applicants have added new Claims 31-34, which recite that the one or more biological activities of a full-length IKK- γ polypeptide comprise interaction with IKK- α/β in cells, IKK- β binding activity, IKK- α

binding activity, or dimerization or trimerization activity, respectively. Support for the amendment and new claims is found for instance in the detailed description of the invention, which discloses that some embodiments of the present invention “provide an isolated IKK- γ subunit having at least ... 85%, 90% 95%, 97%, or 99% amino acid identity with SEQ ID NO: 2” (Specification, at page 21, lines 10-13). Moreover, some embodiments comprise a modified IKK- γ having “at least one biological activity of IKK- γ such as the ability to interact with IKK- α/β in cells; IKK- β binding activity; IKK- α binding activity; ... or dimerization or trimerization activity” (Specification, at page 20, lines 12-18).

Applicants contend that the claim amendments obviate the new matter and written description rejections, and accordingly request that the rejections be withdrawn.

CONCLUSION

Applicants believe the amendments and arguments set forth above traverse the Examiner's rejections and, therefore request that a timely Notice of Allowance be issued in this case. However, should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect.

Dated: April 29, 2005



Christine A. Lekutis
Registration No. 51,934

MEDLEN & CARROLL, LLP
101 Howard Street, Suite 350
San Francisco, CA 94105
415.904.6500